

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

DeWITT CONCRETE CORP.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Corporation Franchise :  
Taxes under Article (X) 9-A of the :  
Tax Law for the Year(s) ~~XXXXXX~~ :  
ending April 30, 1972 and April 30, :  
1973

State of New York  
County of Albany

John Huhn, being duly sworn, deposes and says that

She is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 16th day of November, 1977, she served the within

Notice of Decision by (certified) mail upon DeWitt Concrete  
Corp. ~~XXXXXXXXXXXX~~ the petitioner in the within proceeding,

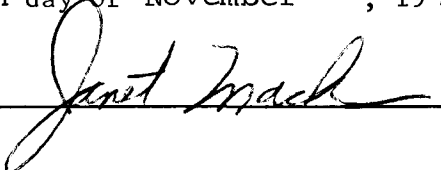
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: DeWitt Concrete Corp.  
Clifton Springs  
New York 14432

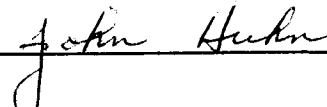
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~XXXXXXXXXXXX~~  
~~XXXXXX~~ petitioner herein and that the address set forth on said wrapper is the  
last known address of the ~~XXXXXXXXXXXX~~ petitioner.

Sworn to before me this

16th day of November, 1977

  
\_\_\_\_\_

  
\_\_\_\_\_

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

DeWITT CONCRETE CORP.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Corporation Franchise :  
Taxes under Article (3) 9-A of the :  
Tax Law for the Year(s) ~~1971~~ ending :  
April 30, 1972 and April 30, 1973

State of New York  
County of Albany

John Huhn, being duly sworn, deposes and says that

he is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 16th day of November, 1977, he served the within

Notice of Decision by (certified) mail upon Thomas F.

Burke, Esq. (representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

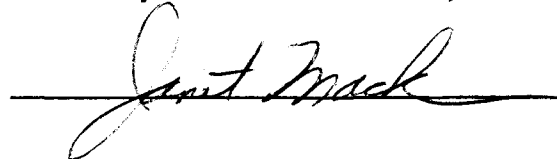
as follows: Thomas F. Burke, Esq.  
Executive Park Tower  
Albany, New York 12203

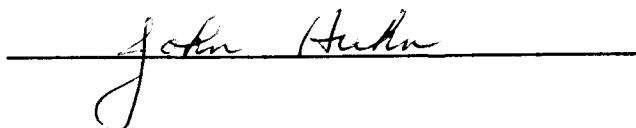
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the (representative  
of the) petitioner herein and that the address set forth on said wrapper is the  
last known address of the (representative of the) petitioner.

Sworn to before me this

16th day of November, 1977.







STATE OF NEW YORK  
STATE TAX COMMISSION  
TAX APPEALS BUREAU  
ALBANY, NEW YORK 12227

JAMES H. TULLY JR., PRESIDENT  
MILTON KOERNER  
THOMAS H. LYNCH

November 16, 1977

**Dewitt Concrete Corp.**  
**Clifton Springs**  
**New York 14432**

**Gentlemen:**

Please take notice of the **Decision**  
of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section ~~(X)~~ **1090** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

**John J. Sollecito**  
**Director**

cc: Petitioner's Representative

Taxing Bureau's Representative

## STATE TAX COMMISSION

In the Matter of the Petitions :  
of :  
DeWITT CONCRETE CORP. : DECISION  
for Redetermination of a Deficiency :  
or for Refund of Corporation Franchise :  
Tax under Article 9-A of the Tax Law :  
for the taxable Years ending April 30, :  
1972 and April 30, 1973. :

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, One Marine Midland Plaza, Rochester, New York, on March 8, 1977 at 1:15 P.M. Petitioner appeared by Thomas F. Burke, Esq. The Corporation Tax Bureau appeared by Peter Crotty, Esq. (Alexander Weiss, Esq., of counsel).

I. Whether petitioner, DeWitt Concrete Corp., was entitled to an investment tax credit on the purchase of trucks upon whose chassis mixing drums are mounted for the preparation of concrete.

II. Whether the petitions were timely filed.

FINDINGS OF FACT

1. On December 15, 1974, the Corporation Tax Bureau issued notices of deficiency to petitioner, DeWitt Concrete Corp., for the taxable year ending April 30, 1972 in the amount of \$138.89, plus interest of \$18.75, for a total of \$157.64, and for the taxable year ending April 30, 1973 in the amount of \$45.00, plus interest of \$4.22, for a total of \$49.22. An investment tax credit was denied on petitioner's purchase of a redi-mix concrete truck.

2. On August 18, 1975, the Corporation Tax Bureau received a copy of a petition for Redetermination of Deficiency or for Refund of Tax for the taxable years ending April 30, 1972 and April 30, 1973, sworn to on November 8, 1974. An affidavit by accountant Donald W. Miller, sworn to on March 23, 1977, attested to the fact that the original petition which he reviewed and which secured the signature of petitioner's vice-president was forwarded to the Corporation Tax Bureau on November 8, 1974. On February 26, 1976, the Corporation Tax Bureau, in reply to petitioner's letter of February 17, 1976, gave procedural advice on the filing of a petition for the year 1974, stating that previously filed petitions for 1972 and 1973 had no effect on subsequent years.

3. Petitioner, DeWitt Concrete Corp., is in the business of supplying transit-mix concrete and of processing sand and

gravel. Transit-mix concrete is prepared by funneling proper proportions of sand, gravel, concrete and water at their plant into a rotating drum attached to a truck chassis. Power from the truck motor revolves the mixer. A metering device measures, within an accuracy of two percent, the volume of water introduced into the drum. An approved electrical revolution-counting device indicates the number of drum revolutions, at speeds within the mixing range and within designated tolerances. It also records the total number of revolutions. Each counter is reset at zero at the batch plant and is tamper-proof. The unit carries its own water supply to get the correct consistency of the concrete product, which is referred to as "slump" in the industry. Specifications require that a minimum of 100 revolutions occur, that the mixing period be in a specified speed range of 6 to 12 r.p.m., not exceeding 15 minutes, and that the entire load shall be discharged within 30 minutes after mixing has been completed. All concrete produced must meet the following uniformity requirements:

<u>TEST</u>	<u>Permissible Variation</u>
1. Weight per cubic foot calculated to an air free basis	2.0 lbs. per cubic foot
2. Air content, percent by volume of concrete	1.0 percent
3. Slump	1.0 inches
Average slump 4 inches or less	1.5 inches
Average slump greater than 4 inches	

- |   |              |
|---|--------------|
| 4. Coarse aggregate content, portion by weight of each sample retained on a No. 4 sieve                               | 6.0 percent  |
| 5. Unit weight of air-free mortars based on average for all comparative samples tested                                | 1.6 percent  |
| 6. Average compressive strength of 7 days for each sample based on average strength of all comparative test specimens | 10.0 percent |

On the return trip, the mixer drum (into which water was added to insure cleanliness) continues to rotate. The power which drives the truck rotates the mixer hydraulically.

4. During the periods in issue, petitioner, DeWitt Concrete Corp., had transit-mix trucks with a capacity of six yards. For economic purposes, it was determined that the time for a complete load to be delivered and for the unit to return to the batch plant was two hours, thus averaging three yards of concrete per hour per truck which had a capacity of six yards. The trucks had a useful life of more than four years.

#### CONCLUSIONS OF LAW

A. That the petition filed by DeWitt Concrete Corp., subsequent to the audit adjustment and prior to the Notice of Deficiency, is hereby treated as a timely petition.

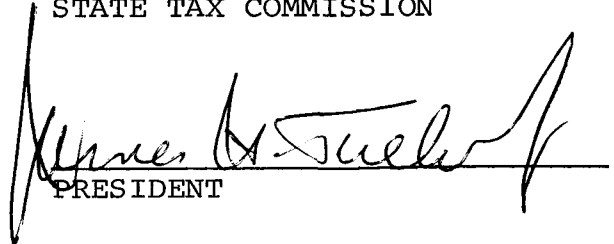
B. That the transit mix concrete truck wherein various raw materials are processed into concrete enroute to the site of its

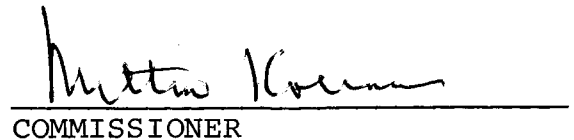
use is tangible property principally used by petitioner, DeWitt Concrete Corp., in the production of goods and that therefore an investment tax credit should be allowed in accordance with the meaning and intent of section 210.12(b) of the Tax Law.

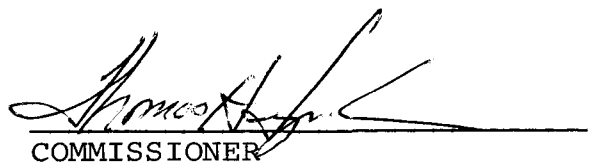
C. That the petition of DeWitt Concrete Corp. is granted and the notices of deficiency issued December 15, 1974 for the taxable years ending April 30, 1972 and April 30, 1973 are cancelled.

DATED: Albany, New York  
November 16, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER